

**TOW SERVICES AGREEMENT FOR AREA-1
ROYAL COACHES**

THIS AGREEMENT is made this 1st day of July, 2009, by and between the City of West Covina ("City") and Royal Coaches ("Tow Operator" or "Operator").

RECITALS

- A. The City determined to enter into an exclusive written agreement for tow services in each of two areas of the City, as set out in exhibit "A."
- B. The City issued an RFP for such tow services, with a different operator to be chosen for each area.
- C. Operator voluntarily responded to the RFP for Area 1.
- D. The City analyzed the responses to the RFP and recommended an agreement with Operator for tow services for Area 1 on the terms and conditions set out herein.

NOW, THEREFORE, the parties agree as follows:

1. **PURPOSE**

A. In consideration of and in compliance with the terms and conditions of this Agreement, Tow Operator is authorized to and shall respond to all West Covina Police Department ("WCPD") calls for tow services within Area 1 as shown on Exhibit "A", attached and incorporated. These calls include calls originated by the WCPD for impounded vehicles, calls for towing of City vehicles at no charge to the City, as well as requests made to WCPD by private parties for tow services in the assigned area in the absence of a specific request for another tow operator. Upon responding, Operator shall provide all non-towing assistance (gas, lock outs), towing and impound services as required by state law, this agreement and WCPD.

B. This agreement shall be administered for the City by WCPD.

2. **COMPENSATION**

A. Administrative Fee. The Operator hereby has offered to pay an annual fee as compensation and an administrative fee to the City of West Covina; and the City accepts such offer for the sole towing rights to geographic Area 1. Operator shall pay the City, an annual franchise fee equal to 30% of the gross revenue of this contract with an annual guarantee of \$100,000 per year. A down payment in the amount of \$100,000 shall be due upon execution of this Agreement. Franchise fee payments and all required reporting to be made on the 10th of each month.

B. City-sponsored Community Event Fee. In addition, the Operator agrees to pay an annual bonus of 1.5% of the gross revenue of this contract to the City for City-sponsored community events.

C. Late Fees. Fee payments that remain unpaid 10 days after the due date shall be delinquent and shall be subject to interest at the rate of 10% of the unpaid amount compounded daily. In addition, failure to make payments or repeated late payments may be considered cause for termination of this Agreement.

3. **TERM**

This Agreement shall commence as of July 1, 2009, and unless sooner terminated shall continue for five (5) years. Thereafter, the Agreement may be extended for additional periods up to five years upon mutual agreement of the parties and on the same terms and conditions.

4. **REQUIREMENT FOR TOW VEHICLES**

A. Trucks and Equipment. The operator shall equip and maintain tow trucks utilized under this Agreement in accordance with the provisions set forth in the California Vehicle Code and consistent with industry standards and practices. All vehicles shall clearly display the name and phone number of the Operator. All such tow trucks shall have been inspected by the California Highway Patrol under Paragraph 17 thereof.

B. Response Time. Operator shall provide sufficient tow trucks in each of the following classes or sufficient higher weight class tow truck substitutions to ensure that the Operator responds to each call for service within a 15 minute maximum response time; notwithstanding the response time for heavy-duty tow vehicles may reasonably exceed the maximum response time. Response time begins when the call is received.

C. Classes of Trucks. The Operator(s) shall provide three classes of tow trucks under this agreement, or may substitute a tow truck in a larger weight category for the absence of a tow truck in a lower weight category:

(1) Class A - Light Duty.

Class A equipment specifications are established by the California Highway Patrol, as amended from time to time. Operator shall maintain a minimum of five tow trucks with a manufacturer's Gross Vehicle Weight Rating of 10,000 to 19,500 pounds with wheel lift capabilities.

(2) Class B - Medium Duty.

Class B equipment specifications are established by the California Highway Patrol, as amended from time to time. Operator shall maintain at least one tow truck with a manufacturer's Gross Vehicle Weight rating of 19,501 to "33,000 pounds. The truck shall be capable of providing air to the towed vehicle. An car carrier must be an additional unit.

(3) Class C - Heavy Duty.

Class C equipment specifications are established by the California Highway Patrol, as amended from time to time. Operator shall maintain or have access to at least one tow truck with a manufacturer's Gross Vehicle Weight rating of at least 33,000 pounds.

The truck shall be equipped with air brakes and must be capable of providing air to the towed vehicle.

5. REQUIREMENTS FOR TOW DRIVERS

A. Requirements for Drivers. Operator shall insure that only qualified and competent tow drivers respond to calls for service under this Agreement. Tow drivers shall be at least 18 years old and possess the following minimum class driver's license and qualifications:

(1) Class A Tow Truck - A valid class C license, or valid class (A)(1) license with a valid medical certificate. The class A(1) license shall be endorsed to allow the operation of a special vehicle configurations and/or special cargos.

(2) Class B Tow Truck - A valid class A(1) license with a valid medical certificate.

(3) Class C Tow Truck - A valid class A(1) license with a valid medical certificate.

B. Licensed Drivers. The Operator shall maintain a current list of drivers and license numbers. Before execution of this Agreement, and thereafter on the payment date, or as otherwise necessary, City may verify the license status of all of the Operator's drivers and verify that there are no convictions as set out in Section 20. The name and license number of new or replacement drivers shall be provided to City for verification upon their employment with the Operator.

C. Pull Notice Program. Operator shall participate in the Department of Motor Vehicle's Pull Notice Program.

D. Driver Identification. Drivers at all times shall have and display badges or other identification of their name and company.

6. TOW FEES

A. Fee Schedules. Fees charged for response and service calls shall not exceed those set out in Exhibit B, attached and incorporated.

(1) All fees shall be posted in plain view at Operator's facility and in

Tow Services Agreement Area 1 – Royal Coaches

each tow truck.

B. Computation of Fees. The total time for towing shall be computed from the time the call is received by the Operator from WCPD to the end of service. All time shall be charged at the hourly rate.

(1) Operator may charge a minimum of sixty minutes per call.

(2) All time spent on a call in excess of sixty minutes shall be charged in fifteen minute increments. There shall be no additional charges such as mileage or labor.

(3) Any secondary towing requested by a customer is subject to negotiation between the Operator and the customer.

(4) Operator shall inform the customer of all differences in the hourly rate for the secondary towing service and provide an estimate of the final cost.

C. Service Calls.

(1) Charges for assistance service calls without towing at the request of the WCPD (out of gas, lockouts, etc.) shall be computed from the time the call is received to the end of service.

(2) Service calls are charged at the hourly rate within a minimum of thirty minutes per call. Charges in excess of thirty minutes shall be charged in fifteen minute increments.

D. Fees for Special Operations.

(1) For special operations involving class B or C tow trucks, Operator shall charge as follows:

(a) Charges in excess of thirty minutes shall be charged in fifteen minute increments.

(2) Regardless of the class of tow truck, charges shall not be more than the class of vehicle towed or serviced, except when vehicle recovery operations require a larger class of truck.

E. Exemption from Fees.

(1) City vehicles towed to WCPD, city yard or a designated repair location.

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F. Increase in Fees.

During the term of this Agreement, fees may be increased by agreement with WCPD to this Agreement.

7. **STORAGE FEES**

A. Storage fees shall not exceed those set out in exhibit B, attached and incorporated.

B. Operator shall display in plain view at all cashiers stations a sign as described in California Civil Code Section 3070 disclosing all storage fees and charges in force, including the maximum storage rate.

(1) Owners of vehicles stored 24 hours or less shall be charged no more than one day of storage. Each day thereafter shall be calculated by calendar days.

(2) The schedule of rates charged by Operator shall be available in the tow truck and shall be presented upon demand to the person(s) for whom the tow services were provided, or their agent, or the police officer at the scene.

8. **RESPONSE TO CALLS**

A. Availability. Operator shall respond to calls generated by or through the WCPD 24 hours a day, seven days a week, within the maximum response time. At the time of the call, Operator will advise dispatch when Operator is unable to respond or meet the maximum response time.

B. Additional Assistance. When an Operators vehicle that was not called to a scene comes upon a collision scene where a vehicle or vehicles are blocking a roadway, an officer may request that vehicle's assistance in clearing the roadway. In such cases, the Operator my be requested to move the vehicle to a safe location, as directed by the officer, and leave it. There shall be no charge for this assistance.

C. Exceptions to Maximum Response Time.

(1) Heavy-duty tow vehicles.

D. Inability or Failure to Respond.

In the event that Operator notifies WCPD of its inability to or fails to respond to a call and furnish a tow truck within the maximum response time, subject to any exceptions, City may (but is not required to) have the vehicle which was the subject of the call removed and taken to Operator's storage facility by any appropriate means. Operator shall reimburse City immediately upon request therefore for any such towing. Repeated unexcused inability or failure

to respond may constitute a default hereunder as set out in Section 22 hereof.

9. PAYMENT FOR TOWING SERVICES RENDERED

A. Vehicle Owner Responsible for Payment. Owners of vehicles towed by order or request of WCPD are responsible for all services, whether regular or special, associated with the towing service. Operator shall provide itemized bills, showing charges for all classifications of services, including the charges for late payment. A copy of the complaint procedure also shall be furnished to the vehicle owner upon its release.

B. City Not Liable for Payment. Neither the City of West Covina nor the WCPD will be responsible or liable for towing services in the event that the vehicle owner refuses or is unable to pay for the services.

10. PUBLIC ACCESS TO OPERATOR

A. Officer Hours. Operator's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. daily, Monday through Friday. Operator shall also maintain a local after hours phone number for use during other than normal business hours. Operator shall have a representative or answering service available at said after hours telephone number during all hours other than normal officer hours.

B. Service Complaints.

(1) All complaints by vehicle owners initially shall be directed to Operator. Operator shall record all complaints received by mail, by telephone, or in person (including date, name, address of complainant, and nature of complaint). Operator shall use its best efforts to resolve all complaints by close of business of the second business day following the date on which such complaint was received. All oral responses shall be followed by a written statement.

(2) Operator will maintain separate records listing the date of the complaints, the vehicle owner, describing the nature of the complaint or request, and when and what action was taken by the Operator to resolve the complaint. All such records shall be maintained for a period of four (4) years and shall be available for inspection and copying by WCPD.

(3) Operator shall prepare monthly summaries of vehicle owner consumer complaints. These summaries shall be delivered monthly to the Traffic Sergeant or his representative with authority to resolve consumer complaints.

11. RESOLUTION OF VEHICLE CONSUMER COMPLAINTS

A. WCPD Review. A vehicle owner dissatisfied with the Operator's decision regarding a complaint may ask the WCPD to review the complaint. The vehicle owner must

request WCPD review within 30 days of receipt of Operator's written response to the complaint or within forty-five days of submitting the complaint to the Operator, if the Operator has fails to response to the complaint. The WCPD may extend the time request its review for good cause.

B. Patrol Commander Review. Before reviewing the complaint, the Traffic Sergeant shall refer it to the Operator. If the Operator fails to cure the complaint within ten days, the Patrol Division Commander shall review the vehicle owner's complaint. The Patrol Division Commander may request written statements from the Operator and vehicle owner and/or oral presentations.

C. Remedies. The Patrol Division Commander shall determine if the vehicle owner's complaint is justified, and if so, what remedy, if any, shall be imposed. The remedy under this section shall be limited to a rebate of vehicle owner charges related to the period of breach of any of the terms of his Agreement.

D. Final Decision. The Patrol Division Commander may delegate his duties to a designee. His decision may be appealed to the Chief of Police or his designee within 10 days of receipt. The Chief of Police shall review the entire file within 15 days and provide a written decision. He may uphold, deny, or modify the decision of the Patrol Division Commander. His determination is final.

12. VEHICLE STORAGE

A. Storage Facility. Operator shall tow all vehicles to its storage facility unless otherwise instructed. Operator shall provide security for all stored vehicles and property at the place of storage. At a minimum, either a fenced or closed area for storage shall be used. Operator is responsible for the care, custody, and control of any property contained in towed or stored vehicles.

(1) Operator shall release personal property from the vehicle to the vehicle's owner or his/her agent upon demand and authorization by the WCPD pursuant to California Code Section 22861 (b). Personal property is considered to be items that are not affixed to the vehicle.

B. Storage Location. The primary storage facility shall be at the same location as the business address. If the primary storage facility is not at the same business address, there shall be no charge for any additional distance traveled to and from a secondary location. Prior to the use of a new storage facility that was not listed on the Operator Tow Service Agreement application, the new storage facility must be added to the Agreement.

C. Release of Impounds. An impounded vehicle shall be released only upon prior written authorization from the WCPD and payment of all required fees and charges.

D. Other Releases. A vehicle that is not impounded shall be released upon request of the registered owner or person in control of the vehicle, pursuant to California Vehicle Code section 22850.3. It is the duty of the Operator having possession of the vehicle to

advise the person making the request of any and all related additional fees for services.

13. INSURANCE

A. Types of Coverage. Operator shall maintain the following minimum levels of insurance from a company or companies acceptable to City.

(1) Business Automobile Liability (as required by California Vehicle Code section 16500.5) - bodily injury and property damage with a combined single limit of not less than \$750,000 for a class A tow truck. The combined limits for classes B, C and D shall not be less than \$1,000,000. These minimum standards are to include owned, non-owned, and hired auto coverage.

(2) Uninsured motorist -- legal minimum, combined single limit.

(3) On-Hook coverage - insuring the vehicle in tow with limits based upon the size of the tow truck.

- (a) Class A tow truck \$ 50,000
- (b) Class B tow truck \$ 75,000
- (c) Class C tow truck \$200,000

(4) Garage liability includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than \$500,000.

(5) Garage keepers' liability shall be the same minimum as on-hook coverage for vehicle in the care, custody and control of the Operator in the storage yard.

(6) Worker's Compensation Insurance as required by the State of California and Employee's Liability Insurance.

(7) Operator shall furnish the City with an Endorsement of Insurance (3 copies) as evidence that the insurance required is in effect. The Endorsement shall name by City of West Covina, its officers, volunteers, agents and employees as additional insured by endorsement under the policy and shall provide that the coverage shall be primary coverage as to such additional insured.

(a) The Endorsement cancellation clause shall state that the insurance may not be modified or terminated by the insurer without first giving thirty (30) days prior written notice of such termination to the City and WCPD

14. INDEMNIFICATION AND DEFENSE

A. Operator Indemnification and Defense. Notwithstanding the limits of any insurance, Operator shall assume the defense of and indemnify and save harmless WCPD, the

City, its officers, agents, volunteers, and employees from and against any and all claims, loss damage, demand, injury, or liability of every kind, nature and description (including but not limited to costs and expenses which include attorney's fees for counsel acceptable to the City), directly or indirectly arising or alleged to arise from its performance or failure to perform under the Tow Service Agreement or other work except as to liabilities due to the sole negligence or willful misconduct of the City. This Section 15(A) shall survive termination of the Agreement.

B. Indemnification. Operator shall indemnify and save harmless WCPD, the City, its officers, volunteers, agents, and employees from any and all claims, loss demand, and liability of every kind, nature and description (including attorney's fees), directly or indirectly arising from the claim that this Agreement, in whole or in part, is invalid, illegal or void on any grounds whatsoever. In the event that any such claim is made, Operator shall not be excused from their obligation to make payments under the Agreement until such a time as this Agreement is terminated in accordance with its terms or by order of a court of competent jurisdiction preventing performance of this Agreement in accordance with its terms.

C. Waiver of Claims. By execution of this Agreement, Operator also releases and knowingly waives any claim it may have against City, its officers, agents or employees regarding the RFP process, selection of Operators, the administrative fee or City's release fee, or any claim arising in the future, and waives the protections of Civil Code § 1542.

15. SECURITY

Prior to commencement of work hereunder, or at any time thereafter, the Assistant City Manager may request that Operator furnish to City a faithful performance bond in the amount of the remaining total payments for the remaining term of this Agreement. This bond shall be in a form acceptable to WCPD, the Assistant City Manager and the City Attorney.

16. INSPECTIONS

WCPD has the right, but is not obligated to, inspect all tow trucks annually. At the request of Operator, WCPD shall inspect a tow truck within seven calendar days of the request. The Traffic Sergeant or his designee may conduct additional inspections of vehicles or the storage facility without notice to Operator during business hours at any time. Operator shall use only tow trucks that have been inspected and approved by the California Highway Patrol annually.

17. BUSINESS RECORDS

A. Log. Operator shall maintain a log of all tow services, including a description of vehicles towed, time, location of calls, total itemized costs of towing and storage, and the disposition of each. WCPD may inspect, without notice, Operator's records during business hours. Operator also shall retain a complaint log as set out in Section 10.

B. Lien Sales. Lien sale records of vehicles towed or stored under this Agreement shall be available to WCPD for Review.

C. Retention. All such records shall be maintained and available for inspection for a period of four years from the date of the service provided.

D. Books and Records of Account: Audit and Examination Rights. The Operator shall keep or cause to be kept in accordance with generally accepted accounting principles full and accurate books of account, records, cash receipts, and other pertinent data showing its gross receipts regarding its operation under this contract. Such books of account, records, cash receipts and other pertinent data shall be kept for a period of four (4) years after the end of each accounting year and partial accounting year, and shall be made available to the City staff or designees upon 72 hours notices. Such books of account and all pertinent data and records shall be kept in sufficient detail as to allow the City, or its designee, to verify the correctness of the gross receipts reported to the City. The receipt by City of any statement or any payment of the percentage of gross receipts for any period shall not bind the City to the correctness of the statement or the payment.

The City, or its designees shall be entitled at any time during the term of this Agreement and within one (1) year after expiration or termination of this Agreement, to inspect and examine records, books of account, cash receipts, and other pertinent data of the Operator so the City can ascertain the percentage of gross receipts, as applicable, due to the City. The Operator shall cooperate fully with the City with respect to the inspection. The City retains the right to request changes to the Association's accounting practices if the City deems those practices to be insufficient for purposes of verifying gross receipts. The City shall hold all such data as competitive sensitive data to the extent allowed by law.

The City may cause an audit of the Operator's books and records by an independent accountant of the City's own selection for any operating year. If an audit reveals that the gross receipts reported to the City were less than the actual gross receipts of the Operator for any given year, then the Operator shall immediately pay to the City all earned but unpaid fees due to the City. If an audit reveals an underpayment by more than five percent (5%), the Operator shall immediately pay to the City the cost of the audit, otherwise the City shall pay the cost of the audit. The Operator shall be held responsible for unpaid amounts and audit fees for the four operating years preceding the audit. Failure to pay within fifteen (15) days of written notice by the City any amounts due to the City as a result of audit findings shall constitute a default under this agreement. In such event, the City may exercise its rights and remedies granted in this agreement. All such records shall be maintained and available for inspection for a period of four years from the date of the service provided.

18. NO ASSIGNMENT / NO SUBCONTRACTING

This Agreement shall not be assignable, in whole or in part. Subcontracting shall be allowed with prior consent of WCPD. Subcontractors must comply with the provisions of this agreement. The sale and/or transfer of any interest in Operator shall immediately terminate this Agreement. The individual or entity that acquires the interest must reapply as a new entity and may be subject to an RFP process.

19. ANNUAL REVIEW OF PERFORMANCE AND QUALITY OF SERVICE

A. Annual Review. At the City's sole option, within ninety (90) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement, the City of West Covina may hold a public hearing at which the Operator shall be present and shall participate, to review Operator's performance and quality of service. The reports required by this Agreement regarding customer complaints shall be utilized as the basis for review. In addition, any City of West Covina resident may submit comments or complaints during the review meetings, either orally or in writing.

B. Report of Review. Within thirty (30) days after the conclusion of the public hearing, the City shall issue a report with respect to the adequacy of performance and quality of service. If any non-compliance with the Agreement is found, the City may direct the Operator to correct the inadequacies or the Agreement may be subject to termination.

20. COMPLIANCE WITH LAW/CHANGE OF LAW

A. Operator shall at all times comply with Federal, State and local laws and ordinances including those which may be amended or added from time to time.

(1) Operator and/or drivers cannot have convictions of specific sexual crimes (those outlined in Vehicle Code section 2432.2(2)), or violent crimes as set out in state law, or drug, theft, embezzlement or similar convictions which directly relate to his/her fitness to provide services. Any conviction may be cause for termination of this Agreement.

(2) Any misdemeanor conviction of an owner or operator involving stolen or embezzled vehicles or fraud related to the towing business may be cause for termination of this Agreement.

B. Operator shall comply with the terms and conditions of this Agreement. Failure by Operator or its agents to comply with the terms and conditions of this Agreement may be cause for termination of the Agreement.

21. BAN ON SALES

Throughout the term of this Agreement and any extension thereof, and for at least six months after its termination, and to the extent allowed by law, Operator shall not sell any vehicle, at lien sale or otherwise, to any current, former or retired member of the WCPD or his/her immediate family. Violation of this provision shall be cause for termination of the agreement.

22. TERMINATION

A. Termination for Cause. During the term of this Agreement in the event Operator breaches any provision of this Agreement, City shall give Operator a thirty (30) day written notice to cure or commence to cure the breach, unless the breach effects safety, in which

case any cure must be immediate. If the breach continues after such notice, the City may terminate this Agreement for cause, retain the annual payment, collect future payments owing (subject to mitigation), and exercise any and all available remedies for breach of contract.

B. Thereafter Without Cause. After the initial five (5) year term of this Agreement, the towing services of the Operator may be terminated by the City without cause by giving thirty (30) days prior written notice to the Operator in writing of its intent to terminate the Agreement. Thereafter, this Agreement shall terminate effective as of the day prior to the next quarterly payment date.

23. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Such service shall be effective on the date of delivery. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

CITY:
Patrol Commander
West Covina Police Department
1444 West Garvey Avenue South
West Covina, CA 91790
cc: Assistant City Manager
City of West Covina
1444 West Garvey Avenue South West Covina, CA 91790

OPERATOR:
Royal Coaches
14827 Ramona Boulevard
Baldwin Park, CA 91706

Such service shall be effective on the date of deposit in the mail of any notice served.

24. INDEPENDENT CONTRACTOR

The parties intend that Operator, in performing services herein specified, shall be and remain an independent contractor and shall have control of its work and the manner in which it is performed. It shall be free to contract for similar services to be performed for other employers while it is under contract with WCPD. Operator is not considered to be an agent or employee of WCPD and is not entitled to participate in any pension, medical or dental plans, or any other benefit provided by WCPD for its employees.

25. FINANCIAL INTEREST

The sale and/or transfer of any interest in Operators shall immediately terminate tow service agreement. The individual or entity that acquires the interest must reapply as a new entity.

26. MODIFICATION WAIVER

This Agreement shall not be modified except in writing executed by all parties. No waiver of any term or condition of this Agreement by either party, hereof shall be a continuing waiver thereof.

27. TIME OF PERFORMANCE

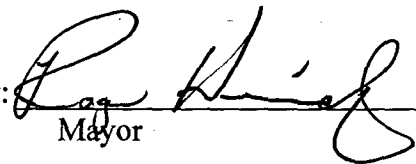
Operator shall begin work upon receipt of a written notice to proceed from WCPD and shall thereupon work diligently and continuously to provide all the required services and activities described herein.

28. ATTORNEYS FEES


In any lawsuit or other proceeding to enforce or interpret this Agreement, in addition to any judgment or award granted at law or equity, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties enter this Agreement on the date first written above.

CITY OF WEST COVINA

By: 
Mayor

ATTEST


City Clerk

OPERATOR – ROYAL COACHES


By: 
Its: _____

EXHIBIT "A"

1. Maximum fees established by the City of West Covina for towing services are below.
Note: These fees are within the industry standard for towing and storage.

TOWING

- a. Class A hourly rate - \$150.00
- b. Class B hourly rate - \$215.00
- c. Class C hourly rate - \$276.00
- d. Class D hourly rate - \$328.00

Fees in addition to the hourly rate will be billed in 15 minute increments

STORAGE

- a. Motorcycles - \$20.00
- b. Light Duty (class A) - \$38.00
- c. Medium Duty (class B) - \$46.00
- d. Heavy Duty (class C & D) - \$52.00

NOTE: Above rates are based on a daily rate. Where possible, inside storage can exceed \$5.00 per day in addition to the daily rate established.

After -hour gate fees cannot exceed one-half the established hourly rate.